

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL APPEAL No 906 of 1986

For Approval and Signature:

HON'BLE MR.JUSTICE J.M.PANCHAL
and
HON'BLE MR.JUSTICE M.C.PATEL

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1. Whether Reporters of Local Papers may be allowed : NO
to see the judgements?
 2. To be referred to the Reporter or not? : NO
 3. Whether Their Lordships wish to see the fair copy : NO
of the judgement?
 4. Whether this case involves a substantial question : NO
of law as to the interpretation of the Constitution
of India, 1950 of any Order made thereunder?
 5. Whether it is to be circulated to the concerned : NO
Magistrate/Magistrates, Judge/Judges, Tribunal/Tribunals?

STATE OF GUJARAT

Versus

MANHARLAL A RANA

Appearance:

MR SUDHANSHU S PATEL, APP for Appellant
MR PK SHUKLA for Respondent No. 1
..... for Respondent No. 2/AMB

CORAM : HON'BLE MR.JUSTICE J.M.PANCHAL
and
HON'BLE MR.JUSTICE M.C.PATEL

Date of decision: 10/01/2005

ORAL JUDGEMENT

(Per : HON'BLE MR.JUSTICE J.M.PANCHAL)

Instant appeal filed under Section 378 of the Code of Criminal Procedure, 1973 is directed against judgment dated May 3, 1986 passed by the learned Additional Sessions Judge, Baroda in Sessions Case No.106 of 1985 by which the respondents are acquitted of the offences punishable under Section 302, 302 read with 114 I.P.C. and Section 135 of the Bombay Police Act. It may be stated that during the pendency of the appeal, the respondent no.2 expired and, therefore, by an order dated January 24, 1990 passed by Division Bench comprising A.P. Ravani, J. (as he then was) and V.H. Bhairavia, J., the appeal filed against respondent no.2 has been treated as having finally abated on his death.

2. Deceased Jhenabhai Maganbhai Rana was residing in Dabhoi town with his wife, son and daughters. The name of his eldest daughter is Kantaben. Kantaben is married to respondent no.1. The respondent no.2 was the father of respondent no.1. During subsistence of her marriage with the respondent no.1, Kantaben gave birth to two children. The respondent no.1 was doing the work of light-fitting but had fallen amongst bad company as a result of which, he was beating Kantaben. The incident in question took place on July 18, 1985. Three to four months prior to the day of incident, Kantaben came to her parental house as she was being beaten mercilessly by the respondent no.1. On the day of incident, Kantaben, in the company of her younger sister Sharda, went to the dispensary of Dr. Manilal Patharwala to bring medicine for her son Sandip who was ill. It may be stated that Laljibhai, who is brother of Kantaben and complainant in this case is serving as Compounder in the dispensary of Dr. Manilal Patharwala. When Kantaben was returning home with medicine, she was accosted by the respondent no.1. The respondent no.1 started beating Kantaben but was saved by one Mahmadbhai. Thereafter, Kantaben went home in a rickshaw. On learning about the incident, the complainant took leave of his master and went to his house. Meanwhile, Pasiben, who is daughter of complainant's father's sister came rushing to the house of the complainant and informed the complainant and others present in the house that the respondent no.2 caught hold of the deceased whereas respondent no.1 inflicted knife blow on thigh of the deceased as a result of which, the deceased fell down. On learning about the assault on the deceased. complainant and others went to the place where the deceased was assaulted. They found that he was bleeding profusely. Therefore, they removed

the deceased to Government Dispensary. Laljibhai, who is son of the deceased, lodged complaint against the respondents and offence punishable under Section 307 read with 114 was initially registered against them. During the course of treatment, the deceased succumbed to his injuries and, therefore, offence punishable under Section 302 I.P.C. was registered. The complaint lodged by Laljibhai was investigated by Mr. D.G. Aswar who was then senior P.S.I. of Dabhoi Police Station. On completion of investigation, the respondents were chargesheeted in the court of learned Judicial Magistrate First Class, Dabhoi for commission of offences punishable under Section 302, 302 read with 114 I.P.C. and Section 135 of the Bombay Police Act. As the offence punishable under Section 302 I.P.C. is exclusively triable by a Court of Sessions, the case was committed to Sessions Court, Baroda for trial where it was numbered as Sessions Case No.106 of 1985.

3. Necessary charge against the respondents was framed at Exh.3 which was read over and explained to them. They pleaded not guilty to the same and claimed to be tried. The prosecution, therefore, examined (1) Dr. Sumantlal Bholanath as p.w.1 at Exh.12, (2) Laljibhai Jhenabhai as p.w.2 at Exh.14, (3) Pasiben Chandubhai as p.w.3 at Exh.15, (4) Shakriben @ Somiben Vithalbhai Lallubhai Rana as p.w.4 at Exh.16, (5) Shantaben Chandubhai as p.w.5 at Exh.17, (6) Muslimbhai Hamidbhai Sheikh as p.w.6 at Exh.20, (7) Shardaben Govind Bhikha as p.w.7 at Exh.23, (8) Kantaben Manharlal Ambalal as p.w.8 at Exh.24, (9) Kalidas Chunilal Rana as p.w.9 at Exh.25, (10) Fakirbhai Jitabhai Rana as p.w.10 at Exh.27 (11) Narsing Budharbhai as p.w.11 at Exh.29 and (12) Dhirsinh Govindsinh Parmar as p.w.12 at Exh.30 to prove its case against the respondents. The prosecution also produced documentary evidence such as inquest report at Exh.8, panchnama regarding seizure of clothes of the deceased at Exh.9, report of the analysis at Exh.10, post-mortem notes of the deceased at Exh.13, map of place of incident at Exh.21, panchnama of place of occurrence at Exh.26, panchnama indicating the arrest of respondent no.1 at Exh.28, complaint lodged by Laljibhai at Exh.31, in support of its case against the respondents.

4. After recording of evidence of prosecution witnesses was over, the learned Judge explained to the respondents the circumstances appearing against them in the evidence of prosecution witnesses and recorded their further statements, as required by Section 313 of the Code of Criminal Procedure, 1973. In their further statements, the case of the respondents was that of

denial. However, no defence evidence was adduced by any of them. On appreciation of evidence adduced by the prosecution, the learned Judge held that it was proved by the prosecution beyond reasonable doubt that deceased Jhenabhai Rana died a homicidal death. The learned Judge found that there were several deficiencies in the prosecution case and that it was not safe to rely upon the testimony of witnesses examined by the prosecution. According to the learned Judge, no evidence could be adduced by the prosecution to establish that the respondent no.2 caught hold of the deceased or that the respondent no.1 thereafter gave knife blow to the deceased. In view of abovereferredto conclusions, the learned Judge has acquitted the respondents by judgment dated May 3, 1986 giving rise to instant appeal.

5. Mr.S.S. Patel, learned APP contended that the learned Judge of the Trial Court has committed grave error in disbelieving testimony of (1) eye-witness Pasiben, (2) eye-witness Shakriben as well as (3) eye-witness Shantaben and, therefore, the impugned judgment deserves to be set aside. It was argued that not only the eye-witnesses have corroborated each other but their testimony stands corroborated by medical evidence on record also and, therefore, the learned Judge was not justified in not accepting the case of the prosecution. What was asserted was that witness Pasiben Chandubhai as well as witness Shakriben, being close relatives of the deceased, would not allow the real culprits to go scot-free and involve the respondents falsely in such a serious case as a result of which, the appeal should be accepted. It was pleaded that find of same blood group on the baniyan of the respondent no.1, as that of the deceased would show that the respondent no.1 was in close proximity of the deceased when the deceased was fatally wounded and therefore, appeal against sole surviving respondent should be allowed. It was argued that the learned Judge of the Trial Court has not appreciated the evidence on record in its true perspective and, therefore, the impugned judgment should be set aside and the respondent should be convicted under Section 302 read with 114 I.P.C.

6. Mr. P.K. Shukla, learned counsel of the respondents contended that the discrepancies and deficiencies noticed by the learned Judge in the evidence of eye-witnesses cannot be termed as inconsequential or of no significance and, therefore, the learned Judge was justified in recording acquittal of the respondent no.1. It was argued that a fair reading of evidence of Pasiben as well as that of witness Shakriben and witness

Shantaben makes it very clear that none had seen the incident in question at all but they had attributed specific role to the respondent no.1 because they had grudge against him and therefore, the learned Judge was justified in acquitting the respondent no.1. It was pointed out that, in fact, all the witnesses had gone to the place where the deceased was assaulted after the incident was over but none had opportunity to witness the incident and, therefore, well-founded acquittal of the respondent no.1 should be confirmed by this court, more particularly when the learned APP has failed to demonstrate before this court that the findings recorded by the learned Judge are either perverse or unreasonable. It was argued that find of same blood group as that of the deceased on baniyan of the respondent no.1 would not necessarily show that he was in close proximity of the deceased more particularly when no blood group could be detected on bush-shirt of the respondent no.1 and therefore, the appeal which has no merit should be dismissed.

7. This court has considered the arguments advanced by Mr.S.S. Patel, learned APP as well as Mr. P.K. Shukla, learned counsel of the respondent at length and in great detail. This court has also undertaken a complete and comprehensive appreciation of all vital features of the case and the entire evidence on record with reference to broad and reasonable probabilities of the case.

8. The fact that deceased Jhenabhai died a homicidal death is not in dispute. However, the question which deserves to be considered is whether the prosecution has proved its case against the respondent no.1. Witness Pasiben Chandubhai, in her testimony, has clearly stated that she was instructed by the police to give testimony before the court in terms of her police statement and that accordingly, she has given the testimony. It means that she is a tutored witness. Though it was claimed by the prosecution that the incident in question was witnessed by her, she has not stated in her testimony that after reaching house of the deceased, she had informed the complainant or other family members of the deceased who were present in the house that the respondent no.2 had caught hold of the deceased whereas respondent no.1 had inflicted knife blow on the deceased. The claim made by the complainant that Pasiben had told him that the respondent no.2 had caught hold of the deceased and the respondent no.1 had inflicted knife blow on the deceased will have to be treated as material contradiction having regard to the facts of the case.

The case of the prosecution further is that Shantaben who is daughter of sister of Shakriben @ Somiben was sitting on 'otla' of the house of Shakriben and that both of them had seen the incident in question. However, the testimony of Shantaben makes it very clear that she had gone to the place of incident after it was over and that too, on hearing the shouts of the deceased. Witness Shantaben does not corroborate witness Shakriben when Shakriben says that she had witnessed the incident in question while sitting with Shantaben on the 'otla'. It is relevant to notice that in order to rope in the respondent no.2, the complainant had stated that the respondent no.2 had bad eye on his daughter-in-law Kantaben and, therefore, Kantaben had left her matrimonial home. However, Kantaben who is examined in this case as one of the witnesses has not stated before the court that respondent no.2 had an eye on her and that she was being harassed because she had refused to surrender to the advances made by deceased respondent no.2.. This explains tendency on the part of the prosecution to exaggerate the facts. It is further admitted by Kantaben that at the relevant time, the respondent no.2 was suffering from Filariasis and was being treated for the same. If that was so, it is not probable that he would participate in the incident in question wherein the deceased was killed. The evidence on record further establishes that before the deceased was fatally assaulted, a quarrel had ensued for 1/2 an hour and it was raining. Under the circumstances, it is not probable that those who were sitting on the 'otla' would have witnessed the incident in question. Further, the case of the prosecution that the respondent no.2 had caught hold of the deceased whereas the respondent no.1 had inflicted knife blow on thigh of the deceased does not get full corroboration from medical evidence on record in as much as medical evidence on record establishes that the deceased had sustained injuries on dorsal aspect of thigh which is not referred to at all by any of the witnesses. The find of same group of blood as that of the deceased on the baniyan of the respondent no.1 cannot be given undue importance on the facts of the case more particularly when group of blood found on the bush-shirt of the respondent no.1 could not be ascertained. The learned Judge of the Trial Court has recorded cogent and convincing reasons for acquitting the respondent no.1. Those reasons are to be found in the judgment impugned in the appeal, with which this court fully concurs.

9. This is an acquittal appeal in which Court would be slow to interfere with the order of acquittal.

Infirmities in the prosecution case go to the root of the matter and strike a vital blow on the prosecution case. In such a case, it would not be safe to set aside the order of acquittal, more particularly when the evidence has not inspired confidence of the learned Judge who had opportunity to observe demeanour of the witnesses. As this Court is in general agreement with the view expressed by the learned Judge, this Court does not think it necessary either to reiterate the evidence of prosecution witnesses or to restate the reasons for acquittal given by the learned Judge and in the opinion of this Court, expression of general agreement with the view taken by the learned Judge would be sufficient in the facts of the case. This is so, in view of the decisions rendered by the Supreme Court in the cases of (1) GIRIJA NANDINI DEVI & OTHERS vs. BIJENDRA NARAIN CHAUDHARY, A.I.R. 1967 S.C. 1124 and (2) STATE OF KARNATAKA vs. HEMA REDDY AND ANOTHER, A.I.R. 1981 S.C. 1417. On overall appreciation of evidence, this Court is satisfied that there is no infirmity in the reasons assigned by the learned Judge for acquitting the respondent. Suffice it to say that the learned Judge has given cogent and convincing reasons for acquitting the respondent. The learned Additional Public Prosecutor has failed to convince this Court to take the view contrary to the one already taken by the learned Judge and, therefore, the appeal is liable to be dismissed.

10. For the foregoing reasons, the appeal fails and is dismissed. Muddamal to be disposed of in terms of directions given by the learned Judge in the judgment which is impugned in the appeal. The bond, if any, executed by the respondent or his surety shall stand cancelled.

(J.M. Panchal, J.)

(M.C. Patel, J.)

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